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ABSTRACT

The ballot, as a device to communicate to the government by citizens, is perceived to be much more effective in some settings--the direct question in a local election--and less effective in others--the major questions and primary offices in a national election. Such political facts of life are part of the resurging interest in the referendum as a political tool. Because its recent uses have emphasized fiscal controls and because major financial shifts cause major policy revisions, referendums have forced a renewed appreciation within the educational establishment of the harsh reality that money is the lifeblood of institutions. The effects of the referendum in the states of New York and Washington are briefly analyzed. An analysis in greater depth is made of the effects of the referendum in Oklahoma, Nebraska, and California. One reason for use of the referendum as a tool to halt budgets for schools is inflation, but another reason is the lack of confidence in schools caused by federal involvement in the courts, congress, and funding. Local control is perceived as slipping away, and unwelcome policies are seen as being imposed from afar by people who are not affected by those policies. Citizen resentment is fueled by this perception. (Author/MLF)

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LAWMAKING BY REFERENDUM

AND

PUBLIC SCHOOL POLICIES

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Introduction

At some point, far back in American history, there were 5,000,000 qualified voters. When one citizen cast a vote, and even if 80 per cent of the electorate voted in a national election, it was one vote among 4,000,000. When 100,000,000 citizens become qualified voters, and if as many as 40 percent vote in a national election, that one citizen's vote will become one among 40,000,000. History provides a reference point from which an American citizen must see his vote as depreciated, as counting for less, and even the excitement of voting for a presidential candidate cannot erase the fact that the proportional effect has been reduced. That impacts upon voter behavior and attitude. Political depreciation and alienation contribute to suspicion and hostility toward government.

The 1970s saw a sagging interest in the use of the ballot. In 1974, one fourth of the eligible electorate did not even bother to register, and fewer than one half of the registered voters actually voted. By refusing to use the ballot, many of those citizens were indicating that the questions of national elections were too complex, too ambiguous, too vague, and the whole episode was of incomprehensible magnitude. Coupled with the diminished value of one vote in the whole population, voters simply acknowledged the futility of the effort

and did not vote. However, when a local question was involved, one that originated in a grass roots effort, requiring a simple yes or no response, and which had been extensively treated in the local press, a new level of enthusiasm for the ballot returned to citizens. Casting aside their apathy and disinclination to vote, they pursued the simple, direct question by way of the ballot, for that was democracy in a personally satisfying fashion. The ballot, as a device to communicate to government from citizens, was perceived to be much more effective in some settings--the direct question in a local election--and less effective in others--the major questions and primary offices in a national election. Such political facts of life are surely part of the resurging interest in the referendum as a political tool.

Most of the discussion of the pros and cons of a referendum question occurs in the mass media. The structure of the referendum does not allow an exploratory approach toward problem solving. That is, the question cannot be "What is the best way to approach this problem?" Rather, it must be, "Shall we, or shall we not, accept this proposal?" This is true without regard to whether the question deals with minor operational details or major aspects of policy for some such political subdivision as a public school district.

The citizens who have interest in the problem do not meet face-to-face for discussion. Leaders of one or another position on the proposal may meet and discuss, but even that is not likely, given the all-or-none format for final decision making. Each leader is out, whipping up support for his own position, and trying to make news while doing it. This allows newspapers and television to exert a great influence on the citizenry, and perhaps, influence the perceptions of what the choices really are. Policy making is sometimes far away from the governing legislature or board! This format for governmental decision making is very different from the debate oriented representative assembly, where persuasion, negotiations, and compromise prevail.

Such subordination of the American tradition of discussion poses several problems. The risk of domination from the media, too, is real. It is real enough to diminish, somewhat, the values of directness of the citizen as that citizen votes, not through a representative, but directly. Ironically, evidence indicates that many citizens might be unaware of the media influence upon them. (Butler, 1977: 37)

A major change has occurred, recently, in the concept of services to American citizens as epitomized in two services that could be described under the general rubric of welfare--health services and educational services. As birth rates have declined, so also have death rates coincidentally declined. That is, fewer births have been occurring proportionately at the same time that longevity has been extending.

Some consequences of this phenomenon can be seen in society's basic health care unit, the hospital. Hospitals have closed many birth and infant care centers. They have opened and enlarged facilities to care for diseases that characterize the later years of life. Gerontology and geriatrics have become major fields of study. Those new programs have a cost, including facilities, equipment, and personnel. The American passion for a long, comfortable life is being sustained through expanded commitments of the society to accomplish that goal. If it is fair to compare the relative status of American hospitals and schools over very recent decades, the institutionalized welfare represented in hospitals has had a huge growth surge, while that represented by schools has had an exceedingly modest growth.

At the beginning of the 1980s, the degree of social commitment to the two institutions is obviously and sharply diverging. In part, this is due to a difference in the mode of support. Except for the relatively small number of private schools, schools are supported by local and state taxes, and those

sources are much more controllable by an electorate than are federal taxes. Hospitals are supported by fees and varied taxes, but mainly, federal. Practical politics has played a role in establishing a new economic position toward these two institutions. The difference in level of support and source of support are critical to the quality of services that can be offered by two social institutions of long standing. Relative to one another, their positions of acceptance within the larger society have changed in recent years, substantially.

As social institutions, schools may be suffering from a fatigue factor, which is nothing more than a good performance sustained over several decades, but with a highly visible cost factor and some equally visible failures. Population shifts influence society to make different choices about resource commitment. Some voter alienation is apparent in the electorate. Many rational cause-and-effect arguments can be developed, and many causes do contribute. Without identifying primary causes, a primary effect can be identified: the prospect for continued high quality education, offered free of charge through adolescence in a public school district, is threatened.

There is a touch of anarchy in everyone. All hate to be governed; each wants to go his own way with freedoms maximized and obligations minimized. Politically, the legal and systematic expression of anti-government feelings finds its place naturally in the referendum. It is, fundamentally, a political tool of disavowal and distrust, even when government is composed of elected officials. When used in such a restrictive mode as to impact some specific aspect of operation, its effects upon policy--especially, policy revision--are huge.

Understanding the Referendum

American citizens are politically free. They may vote for the candidate of their own choice. They may form their own political party--at least, theoretically. Americans have always been sensitive to taxation and have demonstrated a sharp resistance to increases in taxation. The largest users of locally generated tax revenue are the public school districts. With a very visible and sometimes irritating cost, and disagreement and conflict over what should constitute the curriculum, is it any wonder that spontaneously developed citizen groups have emerged with the narrow goal of exerting a new kind of control over public schools? Most often, that has been some type of fiscal control, and the method for its accomplishment has been a vote of the people on a very narrow question extended through the referendum.

The whole process actually involves more than one kind of action. Legal definitions of terms differ from one state to another, reflecting the sentiments of each independent state legislature, but three words that are part of the whole process merit explanation. Each encompasses some particular political action. Those words are petition, initiative, and referendum.

Petitions may be made to the government as authorized in the United States Constitution:

> Congress shall make no law abridging the freedom of speech, or the right of the people peacefully to assemble, and to petition the government for a redress of grievances.

The Congress, originally and since, has not developed clear cut methods for petitioning. At the federal level, although allowed, petitions have been sporadic and unsystematic, quite unlike what has happened at the state level. Groups have assembled in Washington on occasion; e.g., the poor people who rallied behind Dr. Marting Luther King, Jr., in the 1960s. What those citizens accomplished, as they petitioned for special causes, was not very substantial except as, subsequently, politics was influenced by popular reaction. That is,

they got publicity and opinions, but not immediate adoption and enforcement of a law to address their cause. (Tallian, 1977, p. 6)

Below the federal level, many states not only allow popular petitions, but have also provided clear methodology for using the petition. Ordinary citizens may demand that a certain question be referred to the voters by the government. This is done with a petition endorsed by some specific number or percentage of legal voters as attested by their valid signatures. When such a petition demands a referendum as provided for in the statutes of the state, a ballot on that question must be held. The citizens cannot be denied. (Butler, 1978, p. 23)

Although sometimes the word, initiative, is used to denote the effort that is necessary prelude to a successful petition, it has a more specialized meaning, too. A popular initiative is a petition of restricted meaning, covering only those situations in which citizens demand that some measures not adopted by the government be referred to the electorate for a decision. It has the procedural restrictions of the petition, and if approved by the necessary majority, becomes law, even if opposed by the governing body it affects. (Butler, 1978, p. 24) For example, if a public school board desired and planned for some legally allowed budget increase, and if that plan motivated patrons and citizens to demand a reversal or reduction, and if that question at referendum passed, that board would have to revise its budget accordingly. That is an example of policy making at a harsh level, for policy revision frequently must follow budget alteration.

The referendum, itself, is the vote that is extended to the electorate, inviting those citizens to decide an issue. It also includes the wording of the proposition to be voted upon as a ballot issue. The referendum may occur because the question involved demands such an answer. For example, some

questions can be decided only at referendum, and that may be a Constitutional stipulation in some states. Too, some governing bodies may not have power for certain fiscal committments, except through a mandate from their electorate. A building bond issue in a public school district would be an example. Then again, governing boards may be forced into referendums by citizen petitions. (Butler, 1978, p. 23) Generally, such action represents a disagreement of substance between the action of the governing board and the electorate. That disagreement is reduced to one question, not negotiable, that must be answered "Yes" or "No" on the ballot.

As a politically operational concept, the petition-initiative-referendum has been in existence since, at least, it was used in some of the Greek city states. It has an obvious harmony with some of the major facets of democratic political theory. On the American scene in the twentieth century, the concept as a political tool was used extensively prior to W W I. Then, it fell into disuse (except in California) until quite recently. The 1970s saw a surge of new interest and extended use began to appear. Given the restrictions of no negotiations, it is not a precise political tool; it is a bludgeoning tool. When it touches upon the policy of any political subdivision, its impact must be large. Since it so often is devoted to money matters, its effect upon policy-in-place is to cause policy revision or reaction.

Some Effects of the Referendum

In 1979, referendums were held in several states. For example, New York, Oklahoma, Nebraska, California and Washington extended to citizens questions that allowed voters to set some kind of maximums for tax collections, budget expenditures, or to approve or disapprove massive bond issues. In New York, voters approved a $500 million bond issue for the development and upgrading of transportation facilities across the state. The question was supported by the

teacher's union in the state in anticipation that such expenditures for construction would help fiscal stability in local school districts. In Washington, voters approved Initiative 62, linking the state's spending limit to the increase in personal income of citizens in the state, and that limit indirectly affecting schools by way of decreased revenue in the form of state aid. The magnitude of the effect is not yet known.

The referendums in the three other states, Oklahoma, Nebraska and California, have been selected for analysis in greater depth. Each instance posed some kind of fiscal restraint with consequent bearing upon policy making. In Oklahoma, State Question No. 539 became Initiative Petition No. 309, and was extended on the ballot as follows:

Shall a statute:

> declaring tax policy and allowing an individual taxpayer to deduct from his State gross income an amount equal to the Federal income tax payable in the same tax year, to be fully accomplished over a three year period, implemented by the Oklahoma Tax Commission, providing for a limited rate of tax and proscribing classes of taxpayers, a defining term and ratio, directing codification, providing for superseding of any inconsistent Laws, providing severability and providing an effective date

be approved by the people?

The petition itself declared that since 1971, the state had imposed the state income tax not only upon individual income, but also upon the amount of earnings paid as federal income tax. Stating that this was double taxation, the petition demanded elimination of that double taxation system, stipulated the manner in which the state would absorb the change into its fiscal operations over a three year period, and established a schedule of income and taxing rates.

Oklahomans defeated I.P. 309. If it had passed, what would its effects have been upon public schools? It would have reduced gross state income from the income tax source and reduced the state treasury, the source of some

funding and appropriations to local schools. Estimates were that state revenue would have dropped by well over $100 million and local school districts would have had to absorb a 15 per cent reduction in revenue, currently supplied through state appropriations. (Education Daily, 11-8-79, p. 4)

In 1978, Californians voted in Proposition 13. Coming with national attention focused on it, the proposition was designed to cut property taxes by $7 billion. Schools fought that initiative, warning that dire consequences would follow if it passed. It passed. Yet, programs did not crumble because the state had a previously undisclosed treasury surplus of $5 billion, and that money was used in special appropriations to bail out the local schools, and other political subdivisions. The education establishment in the state lost much of its credibility because its predictions did not come true. Incidentally, that shift of funds caused schools, nationally, to pass a financial watershed. For the first time ever, states contributed more to the operation of tax supported education than did local sources. For FY 1979, the figures were state sources, 47.4 per cent; local sources, 43.8 per cent; federal sources, 8.8 per cent. (Education Daily, 2-1-79, p. 5).

On November 6, 1979, Californians overwhelmingly voted for Proposition 4, a Constitutional amendment. The summary prepared by the state's Attorney General is as follows:

Proposition 4,

> Limitation of Government Appropriations. Initiative Constitutional Amendment. Establishes and defines annual appropriation limits on state and local governmental entities based on annual appropriations for prior fiscal year. Requires adjustments for changes in cost of living, population and other specified factors. Appropriation limits may be established or temporarily changed by electorate. Requires revenues received in excess of appropriations permitted by this measure to be returned by revision of tax rates or fee schedules within two fiscal years next following year excess created. With exceptions, provides for reimbursement of local governments for new programs or higher level of services mandated by state. Financial impact: Indeterminable. Financial impact of this measure will depend upon future actions of state and local governments with regard to appropriations that are not subject to the limitations of this measure.

In extension of that summary, some characteristics of Proposition 4 would include the following:

1. Base year for state budgets became FY 1979.
2. Appropriations limits to be FY 1979, adjusted for population and cost of living changes.
3. The limitation exempted about 60 per cent of the total general fund of the state.
   (Example: Appropriations needed to pay the state's cost of complying with mandates imposed by federal law and court orders).
4. All tax revenues, including interest on invested revenues, will be under the appropriations limits.
5. Fee or tax revenues in excess of need and on hand at the end of the fiscal year will be returned to taxpayers. (Norton, 1980).

The use of referendums in Nebraska was different. Procedurally, like California with its Proposition 13 in 1978, Nebraska had its own referendum attempt to alter the Constitution. Initiative Measure 302 was designed to limit the budgets of all political subdivisions of the state--over 3,200 units--allowing no more than a 5 per cent increase, without regard to the source of funds. In an inflationary economy, this actually called for a budget decrease. Upon interview about the intent of IM 302, the petition leader was asked if the amendment would prevent the acceptance of some federal funds. He replied, "We wish to keep the federal funds in Washington." (NSSBA Newsletter, 9-1-78, p. 2). The Nebraska IM 302 failed.

In part, it failed because the legislature had just passed the Local Option Tax Control Cut, which made it clear that citizens in any local subdivision could, with 5 per cent of the registered voters on the petition, secure local referendums on matters of ad valorem tax limitation. That statute was used successfully in some Nebraska school districts, most notably the Omaha Public School District--the state's largest school district--where the voters imposed a 0 per cent increase lid for FY 1980. The statute also

stated that limitations could not be removed "...until a majority of the registered voters authorized to vote for the members of the governing body of such political subdivisions vote to alter, amend or revoke such budget limitations..."

In FY 1980, Nebraska schools received over 75 per cent of their revenue from local sources. A zero increase on such a fund in a time of double digit inflation has severe consequences, even in school districts of declining enrollments. Its effects on policy are pervasive. Furthermore, the effects will be extended and accumulative, for the likelihood of removing the lid by the procedure specified in the statute is remote. The legislature may change that part of the statute, putting a time limit of one or two years on each ad valorem limit adopted through referendums. Or, the law may be amended calling for identical methods of placing and removing the limitation, i.e., petitions and simple majorities. Other changes may occur.

Surveys and analyses have gone hand-in-hand with the Nebraska referendum in which the lids were imposed. Older males were quickly identifiable as the most obvious citizen group that was strongly in favor of imposing a budget lid on the Omaha Public School District (Powell, 1980, p. 9; O'Reilly, 1979, p. 7)

When a political subdivision has a zero per cent increase imposed on 75 per cent of its budget revenue, what effects develop? The board commences discussion on program cuts. Administrators develop new operational plans that include 1) reductions in personnel, 2) curtailment of programs deemed to be of a less essential nature, 3) postponement of plant maintenance, and 4) imposition of fees upon students as their part of the costs of some specific programs. Any or all of those plans would impinge upon policy, and might even dictate a need to revise the statements of philosophy. That is, there is a practical linkage between philosophy, policy, and revenue; and

although administrative theory prefers that revenue should be the last consideration, there is no political assurance that it will be. It may be first.

Tension in Policy Developments

Policy refinement comes after institutional establishment. Working back to a point of origin, the reverse is true. That is, the nation's states, all in early expressions of policy favoring public education for citizens called for systems of free and accessible public education. In that sense, the policy was antecedent to the institution. After the endorsement of education, schools materialized as the agencies for the expression of the state policy. Policy, as a refined expression of practice, came slowly and cumulatively. Since those earliest days of public education, policy has been influenced by local goals, local wealth, statutory guides, professional input, and so on. Practice guided operation. Extensive policy codification has been a relatively recent occurrence. The rate of policy development has been much accelerated recently too. Political interests as evidenced by less certain and vacillating financial committments have apparently come to have a greater bearing on educational policies, recently.

After that initial burst of interest in public education, the states, characteristically, assigned local political subdivisions the specific responsibility of "running the schools." That meant local funding and local control. Local funding provided the major portion of revenue until FY 1978. In American society, it is clear that institutional establishment is dependent upon funding. Disestablishment occurs when funding is withdrawn, without regard to the type of institution. Policies expressing goals or procedures are not of much importance when the institution--or a part of it--halts.

Over the years, the proportion of local funding has been reduced and the amount of state and federal funding has been increased. Implicitly, within

the educational fraternity, there has been a practice, which might be called a tacit policy, designed to improve and extend the institution by tapping previously untapped sources of revenue, i.e., state and federal sources. Those have not been in lieu funds; characteristically, they have been over-and-above funds.

Local taxpayers did not get appreciable relief through the new tax revenues. In fairness, it must be pointed out that much of the increased local tax burden followed increased values of houses and the nation's inflation. With new funding sources, local school districts exposed themselves to a new source of control, not clearly foreseen at the outset of this movement to secure those new revenue sources, but now--in the 1970s and 1980s--coming very, very clear. Policies--even carefully and magnificently written policies--designed to provide improved educational opportunities to school children can only be strong as the supporting dollars. When that money structure is changed and funding reduced--as can happen so abruptly by referendum--policies crumble, for they are directly dependent upon money flow.

The federal government has become a very intrusive force in education, especially during the past two or three decades. Courts have demanded this change and ordered that change. Congress has created innumerable special mission agencies, each developing its own set of regulations. Although the federal proportion of educational costs remained at about 8 per cent through the 1970s, federal agencies dictated much policy on threats of withholding federal funds. Sometimes those threats were carried through. Sometimes federal courts approved and sometimes they disapproved such withholding. Sometimes, those federal actions involved questions in which the judiciary posed itself as the legislative branch, as it has moved into many social problem areas, diminishing the other parts of the American political system. It has become a major school policy maker. Frequently, the judiciary is

insensitive, for it is immune to the electorate and now, in some of its actions aimed at public schools, finds itself far afield from the mainstream of American social thought, trapped in an isolated position by some of its own precedents.

Other factors that have, similarly, contributed to alienation include federally funded research, categorical grants in aid, national standardized testing, and legislatively mandated programs for local school districts. Specific local problems enter in, too. Sadly, some local constituencies are withdrawing their support of public education because they see it as no longer locally controlled--only locally funded, and unresponsive. The tool for such abandonment is the budget limiting referendum. The consequence is, and will be, a radical reshaping of educational policy, centering on the question, "What is the mission of the local school district?"

Yet, there are some indications in 1980 that the headlong gallop of citizens toward an embrace of the referendum may have slowed. In California, voters went to the polls on June 3 and rejected Proposition 9 by about a 60-40 per cent split. Put forward by Howard Jarvis, who was so successful with Proposition 13, Proposition 9 would have cut the state's income tax by 50 per cent and reduced state funds for education in FY 1980 by over $7 billion. (Education Daily, 6-5-80, p. 3).

In Nebraska, voters in three public school districts turned back petitions to hold property taxes to zero per cent increases. Patterned after budget lid measures that were imposed on two school districts in 1979, these were the only questions of budget lids for political subdivisions in the state. These referendums lost by very substantial majorities in the election of May 13. (Omaha World Herald, 5-18-80). In a drive mounted during the late spring, a state wide coalition was formed in Nebraska to reform the tax laws of the state. The method chosen was petition and referendum. The purpose of the petition was to submit to Nebraska voters on November 4, 1980, a referendum

calling for amendments to the state's constitution which would, through several complex controls, sharply restrict and/or reduce the amount of taxes that could be collected. The petition drive failed to secure the 50,000 signatures necessary by July 3, 1980. It may be that people are seeing several of the effects of referendum budget lids and judging them to be too harsh a control. Time will, shortly, reveal more about this circumstance, but the tension in policy development, program implementation, and the referendum as a political/societal tool will surely continue.

The referendum is a permanent part of the American political scene. It poses questions in a terribly simple fashion, even when they are, really, exceedingly complex. As a political tool, it has been used most efficiently by that portion of the population over 60 years of age, for that older group has a magnificent voting record. They use the ballot. Because its recent uses have emphasized fiscal controls and because major financial shifts cause major policy revisions, referendums have forced a renewed appreciation within the educational establishment of the harsh reality that money is the lifeblood of institutions. When there is no financial press, that latter fact becomes obscure and remote in the thinking of many educational planners and government agencies making decisions about school mission.

Why the sudden surge of interest in the referendum as a tool to halt budgets for schools? Several reasons have been supplied to this question, and American inflation must be a part of it. However, examination has led this observer to another answer, also. For those institutions in which people have confidence, and over which they feel they exert control, supporting revenues will be supplied. When confidence slips, and control visibly erodes, support will be withdrawn. Of course that confidence-support relationship is a matter of degree, and it always has been in America.

In the case of the public schools, institutional alteration of great magnitude has come, in some large part, from the federal government. Public support for many of those alterations is absent. Local control is perceived as slipping away, and unwelcome policies are seen as being imposed from afar by people who are not affected by those policies. Citizen resentment is fueled by that condition. The American political system provides a safety valve. The popular referendum can be used to reduce the offending institution by denying it funds. Apparently, that accounts for much of the current use of the referendum. It indicates that all who are involved in school policy making must slip into a reality mode, if free American public education is going to flourish, once again.

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